

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRADEARBED, INC. : CIVIL ACTION
:
v. :
:
M/V KAPITAN VODENKO, and :
CARGOPORT TRANSPORTATION, C.A., and:
MURMANSK SHIPPING CO. (MSC), and :
ATLANTIC MARINE TERMINALS, INC. :
and :
ALLIANCE STEEL TRADING CO., :
Third Party Defendant : NO. 96-805

MEMORANDUM AND ORDER

VanARTSDALEN, S.J.

September 23, 1997

This action appears to be a routine claim for damage to a cargo of wire rods in coils loaded on January 24, 1995 aboard the motor vessel Kapitan Vodenko at Matanzas, Venezuela and discharged at Fairless Hills, Pennsylvania, on February 2, 1995. The alleged damage is "in excess of \$29,659.07". Plaintiff is the alleged "shipper, consignee or owner of the cargo". Named as defendants are the vessel, in rem.; Murmansk Shipping Co. (MSC) ("Murmansk"), the alleged owner of the vessel; Cargoport Transportation, C.A. ("Cargoport"), the alleged charterer of the vessel; Atlantic Marine Terminals, Inc. ("Atlantic Terminals"), the alleged stevedoring company engaged for unloading and storage services at Fairless Hills, Pennsylvania. The defendants Cargoport, Murmansk and Atlantic Terminals have all filed answers denying liability and cross-claims for indemnity and/or contribution against all other defendants. There is no record of service of process on the vessel and no pleading or appearance has been filed on behalf of the

vessel. Cargoport filed a third-party complaint against Alliance Steel Trading Co. ("Alliance") alleging that Alliance was the charterer of the vessel and "the carrier of Plaintiff's goods". There is no record of service upon Alliance and no appearance or pleading on its behalf has been filed of record.

This action was filed on February 2, 1996. All of the above noted pleadings were filed including answers, cross-claims and all answers to cross-claims on or before September 3, 1996. On October 25, 1996 attorneys for Atlantic Terminals filed a notice that a Chapter XI Bankruptcy Petition had been filed for Atlantic Terminals in the Eastern District of Pennsylvania, case number 96-30068.

Plaintiff on May 27, 1997 filed a motion to sever the claims and cross-claims against Atlantic Terminals and to proceed against all other parties. After hearing oral argument on the motion on July 31, 1997, an order was entered to hold the motion in abeyance until September 2, 1997 to afford counsel an opportunity to seek in the Bankruptcy Court an order lifting the automatic stay against the bankrupt defendant Atlantic Terminals. I have not been advised of any further developments. The motion should, therefore, be decided. The motion for severance will be granted.

Plaintiff alleges that the Chapter XI Bankruptcy proceeding was converted to a petition under Chapter VII and that Atlantic Terminals will be liquidated. Cargoport and Murmansk object to the severance on the basis that they would be prejudiced by being precluded from asserting their cross-claims against

Atlantic Terminals. They allege that Atlantic Terminals had insurance coverage for the loss. They argue that plaintiff should be required to petition the Bankruptcy Court to lift the automatic stay against Atlantic Terminals to allow the litigation to proceed against Atlantic Terminals to the extent that there is insurance coverage. Plaintiff argues that investigation by its attorneys failed to establish that there was any valid insurance coverage for Atlantic Terminals.

Neither Murmansk nor Cargoport cite any authority that plaintiff has the burden of seeking to obtain a lifting of the automatic stay against Atlantic Terminals. Murmansk suggests in its brief that "it may well be too late for Murmansk to file any claim in the bankruptcy proceeding". Obviously, both Murmansk and Cargoport were advised of the bankruptcy proceeding at least by October 25, 1996 when the suggestion of bankruptcy was filed by counsel for Atlantic Terminals in this proceeding. There is nothing to suggest that Murmansk and Cargoport did not have the right to file unliquidated claims for indemnity and contribution in the bankruptcy proceeding, or to themselves seek to lift the stay so they could continue to assert their claims for indemnity and/or contribution in the pending action. Apparently, neither Murmansk nor Cargoport ever attempted to file a claim or to obtain a lift of the automatic stay in the bankruptcy proceeding. Indeed, if plaintiff can still do so, it would seem that Murmansk and Cargoport would also have the right to seek relief in the Bankruptcy Court.

Plaintiff's complaint is set forth in two separate counts: Count I is against Cargoport and Murmansk for the full amount of plaintiff's alleged loss; Count II is against only Atlantic Terminals for the full amount of plaintiff's alleged loss. If, as Murmansk and Cargoport allege, they did not hire the stevedore Atlantic Terminals, it would appear that they could only be liable to the extent that plaintiff could prove that the loss occurred during transit aboard the vessel. For any loss in transit, they would appear to have no claim for indemnity and/or contribution against Atlantic Terminals. Likewise, if the loss occurred during the unloading of the vessel or thereafter, neither Murmansk nor Cargoport would appear to be liable for such loss.

Plaintiff had the right, if it wanted to do so, to proceed initially only against the vessel, Cargoport and Murmansk on Count I alone. I see no reason, therefore, why the severance should not be granted so that this matter may proceed. If any party obtains a lifting of the stay to the extent of insurance coverage, Atlantic Terminals could then be brought back into the action. Therefore, the motion filed by plaintiff will be granted.

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ORDER

Upon plaintiff's motion for severance of its claims against M/V KAPITAN VODENKO, Cargoport Transportation, C.A., and Murmansk Shipping Co. (MSC) from the claims against the defendant Atlantic Marine Terminals, Inc. (now in bankruptcy) and in consideration of the answers to the motion and after hearing in open Court, it is **ORDERED** that plaintiff's motion is **GRANTED** and the claims against the defendants other than Atlantic Marine Terminals, Inc. are severed from the claims and cross-claims against Atlantic Marine Terminals, Inc. and the action shall proceed as to all other parties.

IT IS FURTHER ORDERED that all discovery including exchanging of expert reports, if any, shall be completed by December 2, 1997; pretrial memoranda shall be filed by all parties by December 9, 1997; the case will be placed on the trial list as of December 10, 1997.

BY THE COURT:

September 23, 1997

Donald W. VanArtsdalen, S.J.